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before the House Committee on Science
"Cleanup and Remediation of Methamphetamine Laboratory Sites"
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Chairman Boehlert, Ranking Member Gordon, members of the Committee, and staff, thank you for this opportunity to appear before you today to offer an overview of the work of the National Alliance for Model State Drug Laws as it relates to states efforts to address the cleanup and remediation of former methamphetamine laboratories. I am honored to be here to discuss these issues that are among the most pressing for states as they address the many problems related to methamphetamine.

About the National Alliance for Model State Drug Laws

As you may know, the National Alliance for Model State Drug Laws (NAMSDL) is the successor of the President's Commission on Model State Drug Laws, appointed by President George H. W. Bush. At the conclusion of the Commission's work of crafting the 44 model state drug laws addressing over 70 alcohol and other drug issues, the Commissioners created a 501(c)(3) nonprofit organization to serve as an ongoing, bipartisan, independently operated resource to assist states in assessing needs, strategizing, and implementing laws and policies to address alcohol and other drug problems using the model laws as a menu of options. Congress began funding the National Alliance for Model State Drug Laws in fiscal year 1995 to hold state model drug laws summits to serve as needs assessment and action planning mechanisms and to provide technical assistance to states as they implement summit recommendations including elements of the models and address emerging issues related to alcohol and other drugs.

Working with States to Address Cleanup and Remediation of Former Methamphetamine Laboratory Sites

Over a decade ago, the aforementioned President's Commission worked with states to address problems related to methamphetamine laboratories. Since its inception, NAMSDL has built upon the work of the Commission through its Summit process, follow-up work, and technical assistance in their efforts to deal with methamphetamine. However over the past two years as the use and production of this drug has increased and spread to states throughout the country, calls for NAMSDL's assistance on legislative and policy efforts to address meth and its related problems increased precipitously.

In response to this high volume of technical assistance requests, NAMSDL held the National Methamphetamine Legislative and Policy Conference in St. Paul, Minnesota in October 2004. This event focused on legislative and policy options toward creating effective, comprehensive, and coordinated responses to precursor chemical control, drug endangered children (DEC), cleanup and remediation of meth lab sites, addiction treatment, and related issues. Three hundred sixty-five people from 34 states, the District of Columbia, and two tribal nations participated in this event; these individuals included

law enforcement officials, addiction treatment professionals, child welfare and child protective services workers, elected officials, environmental scientists, industrial hygienists, federal agencies' staff, and community coalition members.

NAMSDL's National Working Group on Cleanup and Remediation of Methamphetamine Laboratory Sites

As an additional response to states' growing concerns and requests for assistance, NAMSDL agreed to draft a model act or model guidelines for the cleanup and remediation of methamphetamine laboratory sites. Given the growing concern re: cleanup and remediation issues, variety of approaches among the states, the increasing number of states dealing with former meth lab sites, and the changing nature of the labs (e.g. increasing number of apartments, houses, trailers, hotels), NAMSDL identified experts working on these issues in a variety of states and convened a national working group on cleanup and remediation of meth lab sites. This working group includes chemists, industrial hygienists, researchers, environmental toxicologists, public health experts, and other state agency officials at various levels of addressing these issues in the states. Working group members also represent a group of states that are both geographically diverse and at differing stages of addressing issues related to meth; for example, states that have been working on cleanup and remediation issues for many years such as Washington and Oregon as well as states newer to these issues such as North Carolina are included among the working group's membership. Members have met to consider the common issues, recurring questions, and research needed to best set standards for decontamination of meth lab sites and the resulting legal and policy implications.

Overview of Current States' Efforts – Legislation, Policy, and Guidelines

Concerns related to the cleanup and remediation of former methamphetamine laboratory sites (also referred to as clandestine laboratories) are frequently expressed to NAMSDL staff by our contacts in the states working to address these issues. In preparation for the National Methamphetamine Legislative and Policy Conference and the convening of our National Working Group on Cleanup and Remediation of Methamphetamine Laboratory Sites, NAMDSL conducted legislative research of existing statutes, regulations, operating policies, and guidelines related to the decontamination of these sites.

New statutes, regulations, local ordinances, and guidelines relating to the cleanup and remediation of methamphetamine laboratories continue to emerge. State and local governments are working to address different aspects of the indoor and outdoor environmental issues associated with clandestine laboratories. A few states have been dealing with the environmental contamination of these drug laboratory sites head-on for many years and have significant statutory and regulatory provisions in place. Others on the federal, state, and local level have more recently begun to address these concerns.

Note Regarding NAMSDL's Research

Please note that our research is ongoing in this arena. Additionally, we understand that we may not be currently familiar with all of the different categories of laws that states may be using for cleanup and remediation because of the wide breadth of this issue. NAMSDL continues to collect numerous cleanup ordinances from local governments that cannot currently be obtained through our legal research database.

Additionally, please note that a number of states have put together guidelines or guidance documents for the cleanup and remediation of methamphetamine laboratories. We have defined certain documents as guidelines based on the content provided (see attachments of states' specific examples). Documents we are considering guidelines are those that contain detailed scientific sampling information and remediation standards for methamphetamine. Guidelines do not have the force of law by themselves but in some instances, for example, local governments have passed ordinances requiring cleanup contractors to abide by the procedures and cleanup standards that the guidelines establish. Some of the more comprehensive guidelines include information on chemical toxicity, laboratory analytical methods, asbestos guidelines, and field and sampling guidelines. Those documents that may have the term "guideline" in the title but we have considered them as "guidance documents" are those that tend to be less detailed in nature and do not address a remediation standard for methamphetamine.

Scope of Statutes

Based on a review of existing state statutes specifically relating to the cleanup and remediation of clandestine laboratories, the application of the cleanup and remediation provisions varies from state to state and is determined by the type of substance being illegally manufactured. Some states only address the manufacture of methamphetamine. Other state statutes apply to the manufacture of controlled substances generally, as they are defined in the state code, or more specifically to "schedule I or II controlled substances." In addition to the above listed, some states also include the manufacturing of ecstasy and LSD. Thus, it appears that some states are focused specifically on the illegal manufacture of methamphetamine whereas other states have taken a broader approach in their statutory language.

Use of Contractors for Cleanup and Remediation

Several state cleanup laws and regulations address the use of a state-approved environmental cleanup contractor and/or a certified industrial or environmental hygienist. Only three states, however, have tackled by statute or regulation the contractor and employee training and certification in detail. In Washington, Oregon, and Arizona, not only does the contractor need to be certified, but the employees and supervisors must all go through a specific training and certification process. According to NAMSDL's contacts within these states, stricter enforcement is needed with respect to the monitoring of contractors and ensuring that they are using certified employees and proper remediation and sampling procedures. Part of the process for monitoring the contractors is the requirement of some type of work plan to be submitted to the overseeing agency.

A few states currently require by statute or regulation a work plan to be prepared by the contractor. A work plan may include photographs and/or drawings and a written description of the contaminated property, procedures for the decontamination process, a description of the personal protective equipment that will be used, health and safety procedures, and a list of post-decontamination testing that will be completed. In addition to above discussed training and certification requirements, Washington has also established a training provider certification process.

Standards for Decontamination

Currently, approximately seven states have established - by statute, regulation or guideline - a feasibility-based decontamination standard specific to methamphetamine. Feasibility-based is a cost-comparative term used to determine what the economics are of cleaning a meth lab; simply put, “how much do we want to spend to clean it up?” Those states include Alaska, Arizona, Arkansas, Colorado, Minnesota, Tennessee, and Washington. The two most commonly provided measurements are $0.1\mu g/100cm^2$ and $0.5\mu g/ft^2$. There is an ongoing debate about the effectiveness of using a feasibility-based standard. Because research into the long-term health effects associated with clandestine laboratories has just recently begun, health or risk based standards have not been determined yet. These standards are usually determined by asking, "to what level do we need to minimize (clean) a contaminant in order to prevent the average person from having adverse health effects (e.g. become sick)?" This is based upon the toxicology of a compound, the concentration of the contaminant, and the amount of time a person will be exposed to that concentration. Minus the research needed to set these standards, states are relying on the limited research available to determine the appropriate feasibility-based standard that must be met by a cleanup contractor and/or industrial hygienist in order to certify that a property has been decontaminated.

Property Notices re: Former Meth Lab Sites

There are also several notice issues involved in the cleanup and remediation of properties contaminated by clandestine laboratories. A few states have statutory and/or regulatory provisions that require a particular agency to maintain a list of contaminated properties and/or a list of certified contractors that must be available to the public. A property is generally removed from the contamination list once it is certified by the appropriate entity as decontaminated. Another issue relates to the notifying of the county recorder’s office that a property has been deemed contaminated. In Washington, the local health officer is required to file a copy of an order prohibiting the use of a property with the county auditor. If, after the remediation process is complete, the local health officer determines that the property has been decontaminated, s/he is required to record a release for reuse document in the real property records of the county auditor where the property is located. The county auditor provisions are located within the purview of the chapter on the decontamination of illegal drug manufacturing or storage sites. Additional states may have similar statutory and regulatory provisions relating to the recording of property contamination in other parts of the state code.

Numerous states have become concerned with presently or formerly contaminated properties being sold, transferred, or rented without the buyer or occupant being made aware of the status of the property. Such disclosure issues and restriction on the transfer of the property have been addressed in many different areas of the state code. Arizona, Alaska, and Oregon, in particular, address this issue within the purview of their cleanup laws and regulations. The statutes and/or regulations generally require the seller to notify the buyer in writing that illegal drug manufacturing occurred on the premises. A buyer then may cancel the purchase contract within a certain number of days after receiving notice of the property's status. In Oregon, if the seller fails to properly notify the buyer, the buyer may bring suit to recover damages for any losses. In Arizona, the seller is subject to civil penalties for any harm that was caused for his/her failure to comply with its notice requirements.

Local Ordinances

As mentioned earlier, numerous local governments (e.g., cities, municipalities) have passed ordinances that relate to the cleanup of methamphetamine laboratories. Some of the ordinances address nuisance and local building code issues. Other ordinances address cleanup and remediation directly. Ordinances can be found both in states that already have related statutes and regulations as well as in states that have not yet addressed the issue at the state level.

Current Considerations for NAMSDL's Drafting of a Model Act/Guidelines

From the discussions of this working group, existing research that the members have identified, and review of existing laws, policies, guidelines, and ordinances, NAMSDL has drafted the following outline for members' consideration at their final meeting at the end of April 2005. This preliminary outline suggests key components to be addressed in a model act or model guidelines that NAMSDL might draft:

State Agency Authority:

- -oversight of cleanup program (with designated responsibilities to local health departments in regulation probably)
- -set requirement for owner to clean property
- -to promulgate related regulation
- -keep database of properties deemed to be contaminated
- -keep list of certified contractors and approved laboratories

Notification responsibilities:

- -first responder/law enforcement/local health officer/building code officer/local county property records office
- -owner
- -posting on property

Contractors/Industrial Hygienists:

- -certification

-training
-site safety responsibilities
-monitoring of contractors work

Preliminary Assessment and Work Plan

Decontamination Procedures
-for walls, furniture, ventilation system, variety of surfaces
-waste characterization and disposal

Confirmation of Decontamination:
-decontamination standards
-sampling methods
-laboratory analytical testing

After receiving feedback from the National Working Group on Cleanup and Remediation of Meth Lab Sites, the drafting committee of NAMSDL's Board of Directors will complete the draft model act/guidelines. Once the draft is approved by the Board, NAMSDL will distribute the resulting model to our contacts in the states, including Governors and Attorneys General. The model will also be posted on NAMSDL's Web site (www.natlalliance.org).

Additional Research is Needed

Working group members agree that informed, effective, health-based standards for cleanup and remediation cannot be established until more is known about the short and long term health and environmental consequences of meth production. A consistent theme from the working group's discussions is the need for further research. At their most recent meeting, these members concluded that research needs to occur on the following multiple tracks:

- Health-based studies (short and long term)
- Health-based cleanup standards
- Scientifically validated sample collection methods
- Scientifically validated remediation

Examples of specific research needs within these tracks suggested by the working group members include: identifying the primary chemicals of concern (COCs), determining persistent COCs, determining if meth should be the only indicator chemical, establishing the most effective remediation technique for a variety of surfaces (e.g. porous, semi porous, nonporous), and indoor air assessments over time. Any research that addresses these concerns and questions would greatly benefits states' efforts related to decontamination of former meth lab sites.

Concluding Remarks

NAMSDL considers all of the Commission's model laws to be "living and breathing" documents that can offer guidance to states over time by incorporating new findings as necessary. The model act or guidelines that will emerge from the working group process and the Board's drafting will also be viewed as such. NAMSDL will incorporate the findings of new research and new developments in the science related to decontamination of meth lab sites into any model act/guidelines that is drafted for states' reference.

Thank you once again for the opportunity to share this information with you. I would be happy to answer any questions that you have as the hearing proceeds.